

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

True the Vote, Jane Coln, Brandie §
Correro, Chad Higdon, Jennifer Higdon, §
Gene Hopkins, Frederick Lee Jenkins, §
Mary Jenkins, Tavish Kelly, Donna §
Knezevich, Joseph Knezevich, Doris Lee, §
Lauren Lynch, Norma Mackey, Roy §
Nicholson, Mark Patrick, Julie Patrick, §
Paul Patrick, David Philley, Grant §
Sowell, Sybil Tribble, Laura §
VanOverschelde, and Elaine Vechorik §
Plaintiffs, §

Cause No. 3:14-cv-00532-NFA

v. §
§

The Honorable Delbert Hosemann, in his §
official capacity as Secretary of State for §
the State of Mississippi, The Republican §
Party of Mississippi, Copiah County, §
Mississippi Election Commission, Hinds §
County, Mississippi Election §
Commission, Jefferson Davis County, §
Mississippi Election Commission, §
Lauderdale County, Mississippi Election §
Commission, Leake County, Mississippi §
Election Commission, Madison County, §
Mississippi Election Commission, Rankin §
County, Mississippi Election §
Commission, Simpson County, §
Mississippi Election Commission, and §
Yazoo County, Mississippi Election §
Commission
Defendants.

**PLAINTIFFS' RESPONSE TO THE REPUBLICAN PARTY OF
MISSISSIPPI'S MOTION TO DISMISS, OR IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE DISTRICT COURT:

Plaintiffs True the Vote, et. al. (“True the Vote”) file this Response to the Republican Party of Mississippi’s (“RPM”) Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, Doc. 87 and 88, and respectfully show the Court the following:

The RPM has not carried its burden under Federal Rules of Civil Procedure 12 and 56. The uncontroverted facts of this case reveal Plaintiffs requested NVRA records and were denied access to those materials prior to and following a federal election. While the RPM is not the primary target of Plaintiffs’ NVRA claims, it is a necessary party to the litigation because the suit ultimately concerns the RPM’s primary election, which is not entirely a state affair. Moreover, the RPM held the records requested in this case at points during the election.

The Plaintiffs cannot secure complete relief in this case in the absence of the RPM. RPM’s arguments regarding the Equal Protection and Section 1983 claims in this case are premature. While Plaintiffs have evidence of election irregularities relating to the Run-Off Election, the extent of those irregularities is unknown at this time and a matter of factual investigation that the Court may only address after adequate discovery. For these reasons, Plaintiffs ask the Court to deny the RPM’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

Plaintiffs submit the attached Memorandum in Support of their Response and the following Exhibits:

EXHIBIT 1	Excerpts from July 24, 2014 Evidentiary Hearing
EXHIBIT 2	Declaration of Catherine Engelbrecht
EXHIBIT 3	Declaration of Julia Hoenig and Incident Reports
EXHIBIT 4	Declaration of Mike Rowley and Incident Reports
EXHIBIT 5	Declaration of Jeanne Webb and Incident Reports
EXHIBIT 6	Declarations of John Hobson and Karen Hobson and Incident Reports
EXHIBIT 7	Declaration of Sandy Steinbacher and Incident Reports
EXHIBIT 8	July 8, 2014 Letter from Madison County Circuit Clerk
EXHIBIT 9	Declaration of Roberta Swank and Incident Reports
EXHIBIT 10	Declaration of Melinda Kinley and Incident Reports
EXHIBIT 11	Declaration of Ruth Wall and Incident Reports
EXHIBIT 12	Declaration of Susan Morse and Incident Reports
EXHIBIT 13	Declaration of Roy Nicholson
EXHIBIT 14	Declaration and Affidavit of Phil Harding

CONCLUSION

To survive a motion to dismiss for failure to state a claim, a complaint must merely contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*, 550 U.S. at 547. A complaint need not contain “detailed factual allegations.” *Id.* at 555. Instead, it must contain facts with enough specificity “to raise a right to relief above the speculative level.” *Id.*

Here, Plaintiffs' Complaint sets forth facts which indicate that (a) Defendants have refused to turn over records pursuant to the NVRA, and (b) the individual Plaintiffs had their votes diluted by the RPM allowing ineligible voters to vote in the Run-Off. Further, the evidence produced by Plaintiffs related to the facts set forth in their Complaint raise much more than a fact issue with regard to whether RPM has violated the law as claimed by Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that RPM's Motion to Dismiss, or in the alternative Motion for Summary Judgment, be denied.

Respectfully Submitted,

L. Eades Hogue

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014, a copy of the forgoing and its exhibits was served on The Honorable Delbert Hosemann, The Republican Party of Mississippi; The Copiah County Mississippi Election Commission; the Hinds County, Mississippi Election Commission; the Jefferson Davis County, Mississippi Election Commission; the Lauderdale County, Mississippi Election Commission, the Leake County Mississippi Election Commission; the Madison County, Mississippi Election Commission; the Rankin County Mississippi Election Commission; and the Simpson County Mississippi Election Commission via the Court's ECF e-file service. Plaintiffs have served the remaining Defendants, who have not yet registered to the Court's ECF system for this matter, via United States Postal Service, in accordance with Federal Rules of Civil Procedure.

/s/ L. Eades Hogue